

REMARKS

The Non-Final Office Action mailed July 15, 2009, has been received and reviewed. Prior to the present communication, claims 1-6, 8, 11-18, 20, 22-30, 32-44 and 46-49 were pending in the subject application. All claims stand rejected. Each of claims 1, 13, 24, 37, 48 and 49 has been amended herein. Thus, claims 1-6, 8, 11-18, 20, 22-30, 32-44, and 46-49 remain pending. It is submitted that no new matter has been added by way of the present amendments. Reconsideration of the subject application is respectfully requested in view of the above amendments and the following remarks.

Rejections based on 35 U.S.C. § 101

Claims 1-6, 8, 11 and 12 were rejected under 35 U.S.C. § 101 for being directed toward non-statutory subject matter. Claim 1, for example, recites a “system”. The scope of the limitation “system” allegedly encompassed software-only embodiments since the claim listed software elements such as “interface,” “engine,” and “module.” Claim 1 has been amended to recite “a computerized system having one or more computer-storage media and a processor.” Accordingly, claim 1 is tied to an apparatus and is not software per se. Applicant asks the Office to withdraw the 35 U.S.C. § 101 rejection of claims 1-6, 8, 11 and 12.

Claims 13-18, 20 and 22-24 were rejected under 35 U.S.C. § 101 as not falling within one of the four statutory categories of invention. While the claim recite a series of steps or acts to be performed, a statutory “process” or “method” under 35 U.S.C. § 101 must (1) be tied to particular machine, or (2) transform underlying subject matter (such as an article or material) to a different state or thing. As amended, claim 13 recites that the receiving step occurs at “a computing device.” Accordingly, claim 13 is tied to a particular machine. Applicant asks the Office to withdraw the 35 U.S.C. § 101 rejection of claims 13-18, 20 and 22-24.

Rejections based on 35 U.S.C. § 103

A.) Applicable Authority

Title 35 U.S.C. § 103(a) declares, a patent shall not issue when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” The Supreme Court in *Graham v. John Deere* counseled that an obviousness determination is made by identifying: the scope and content of the prior art; the level of ordinary skill in the prior art; the differences between the claimed invention and prior art references; and secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

To support a finding of obviousness, the initial burden is on the Office to apply the framework outlined in *Graham* and to provide some “articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727 at 1741, 82 USPQ2d at 1396 (quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) with approval).” *See also* MPEP § 2142. “[R]ejections on obviousness cannot be sustained with mere conclusory statements.” *Id.* Thus, in order to establish a prima facie case of obviousness the Office must provide “a clear articulation of the reason(s) why the claimed invention would have been obvious” based on factual findings made while conducting the *Graham* factual inquiries. *See* MPEP § 2143. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. *Id.*

B.) Unpatentable Rejection Based Over U.S. Patent No. 6,857,053 to Bolik

Claims 1-6, 8, 11-18, 20, 22-30, 32-44 and 46-49 have been rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,857,053 to Bolik (hereinafter the “Bolik reference”). As explained in more detail below, Applicant respectfully disagrees with the factual findings made by the Office regarding the differences between the claimed invention and prior art references. Accordingly, Applicant respectfully traverses the rejection, as hereinafter set forth.

At the outset, Applicant notes that the Office failed to address claim 49 in the present Office Action. The Office rejected claim 49 on the same grounds explained for claims 1-6, 8, and 11-12. But, claims 1-6, 8, and 11-12 do not claim a message object with a size greater than one megabyte. Accordingly, no rationale was provided for the rejection of claim 49. Further, the size of Bolik’s backup objects, which the Office analogizes with the message object in claim 49, is not mentioned in the Bolik reference.

As amended, claim 1 is directed to a computerized system including one or more computer readable media and a processor for managing the transmission of data from at least one data source to a remote destination at a level above a transport layer. The system includes an input interface to receive data from at least one data source and a transport interface to a transport layer. The system also includes a communication engine that communicates with the input interface and the transport layer. The communication engine encapsulates the data into one or more message objects. The communication engine also associates each of the data sources with at least one corresponding session. The one or more message objects are buffered in an output message queue prior to transmission to the remote destination via the transport layer. The output message queue communicates a message to the data source indicating the departure of an individual message from the queue has occurred, thereby indicating a new message object may

be sent to the output message queue. The system also includes a dispatcher module for binding more than one session to a single connection. The one or more message objects are transmitted through the single connection to a remote destination including an input message queue for buffering the one or more message objects. The dispatcher module manages the transmission of the one or more message objects at a message object level without small-scale flow control at the transport layer. As part of the management without small-scale flow control, the dispatcher module receives an acknowledgement message from the remote destination indicating that the individual message object has been received by the remote destination. The dispatcher module also sends a completion message to the data source indicating the individual message object was received by the remote destination.

In contrast, the Bolik reference, describes a system for keeping track of backed up data. *See* Bolik reference Abstract. The Bolik reference tangentially discusses transferring data into the backup system. The entire teaching of the Bolik reference regarding transmission of data may be summed up in a few sentences. Specifically, through a method that is not described, data (of an unspecified size and format) is transferred to a backup sever where the data is ultimately saved as one or more backup objects (of an unspecified size) in the backup server. The data forming the backup object may also be written to a transaction log during transfer. *See* Bolik reference col. 11, ll. 42-47. The transaction log is used to delete the backup object from the backup storage if the transmission fails or if the user wishes to do so prior to closing the backup operation. *See* Bolik reference col. 11, ll. 42-47. The Office continues to confuse the storage operations described in the Bolik reference with data transfer operations described in claim 1. The differences between the subject matter sought to be patented in claim 1 and the

Bolik reference are such that the subject matter of claim 1, as a whole, would not have been obvious at the time the invention of claim 1 was made.

As described above, the system of claim 1 manages the transfer of data at a layer above the transport layer. Claim 1 has been amended to specifically recite several functions related to managing the transfer of data at the message object layer, rather than at the transport layer. Specifically, the output message queue in the system of claim 1 “communicates a message to the data source indicating the departure of an individual message from the queue.” The dispatcher module “receives an acknowledgement message from the remote destination indicating that the individual message object has been received by the remote destination.” The dispatcher module also “sends a completion message to the data source indicating the individual message object was received by the remote destination.” (Note that support for these amendments is found in the description of FIG. 4). None of these messages are described in the Bolik reference.

Bolik does not describe receiving an acknowledgement message when a message object or backup object is received by the remote destination. The Bolik reference describes sending a failure message when a backup object is not correctly written to the backup server. *Id.* at col. 6, ll. 33-35. The failure message is not an acknowledgement of a successful receipt, but an announcement of failure. Further, the failure message is generated when a write to the backup object fails and is not directly related to a transfer of data. Similarly, there is no message generated when a message object departs from the output queue. The Office asserts that the transaction log corresponds to the output queue. The Bolik reference does not mention the transaction log generating a message of any sort, let alone when the backup object has departed the transaction log.

The system of claim 1 manages the transmission of the data at the “message object level without small-scale flow control at the transport layer” using the previously described messages. The Bolik reference is silent regarding small scale flow control. Being silent is not the same as teaching data transfer without small scale flow control at the transport layer. Thus, the Bolik reference does not teach data transfer without small scale flow control. The Bolik reference does not describe how the backup transmission is managed. The Bolik reference focuses on keeping track of the backup documents once they are transferred to the backup storage. The backup objects are organized in the backup database according to groups of backup objects, but this is not related to the transmission of the data in the client to the backup storage. The Bolik reference does not teach that small-scale flow control is avoided during transmission by storing the backup objects in groups.

Also, the Bolik reference does not describe “associating each of the data sources with at least one corresponding data transfer session,” as recited in claim 1. The Office indicates that this feature is described in col. 6, ll. 3-34 of the Bolik reference. However, this section does not describe sessions or associating data sources with data transfer sessions. The Bolik reference describes assigning backup objects from different data sources (clients) to a group ID. The group ID is used to organize backup objects in the backup database. *See* Bolik col. 6, ll. 1-45. Apparently the Office views the group ID, or perhaps the backup object, as a data transfer session. In actuality, the group ID merely identifies where the backup object is to be saved. The content of the backup object is the data being transferred in the data communication session. Thus, neither the group ID nor the backup object is a data transfer session. Further, the Bolik reference does not describe all items in a backup object being transferred in the same data transfer session. Neither a data transfer session, nor associating a data transfer session with a

data source is described in the Bolik reference. Thus, the Bolik reference does not describe associating each of the data sources with at least one corresponding data transfer session.

Additionally, the Bolik reference does not describe “transforming the data into a plurality of message objects” as recited in claim 1. The Bolik reference receives the data as backup objects (e.g., files) and stores the backup objects in the same form. *See* Bolik reference col. 6, lines 3-15. No transformation is described in the Bolik reference. Thus, the Bolik reference does not describe “transforming the data into a plurality of message objects.”

Thus, Applicant respectfully suggests that the Office has not carried its burden of establishing a *prima facie* case of obviousness because the differences between claim 1 and the cited reference are significant. Further, claims 2-6, 8 and 11-12 are allowable, at least by virtue of their dependency on claim 1. Accordingly, Applicant respectfully requests the withdrawal of the 35 U.S.C § 103(a) rejection of claims 1-6, 8 and 11-12.

With reference to independent claim 13, the Bolik reference does not describe “receiving an acknowledgement message from the remote destination indicating that the message object was received by remote destination,” “communicating a confirmation message to the data source indicating that the message object was received by the remote destination,” or a message object larger than one megabyte. Thus, Applicant respectfully suggests that the Office has not carried its burden of establishing a *prima facie* case of obviousness because the differences between claim 13 and the cited reference are significant. Claims 14-18, 20, and 22-24 depend, either directly or indirectly, on allowable claim 13. Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. § 102 rejection of claims 13-18, 20, and 22-24.

Turning now to independent claim 37, recites “associating each of the data sources with at least one corresponding session.” As described previously with reference to

claim 13, the Bolik reference does not describe associating each of the data sources with at least one corresponding session. For reasons given with reference to claim 1, the Bolik reference also does not describe “managing the transmission of the one or more message objects at a message object level without small-scale flow control at the transport layer” or “transforming the data to one or more message objects in a communication engine.” Accordingly, as the Bolik reference fails to describe, either expressly or inherently, every element of independent claim 37. Thus, Applicant respectfully suggests that the Office has not carried its burden of establishing a *prima facie* case of obviousness because the differences between claim 37 and the cited reference are significant. Claims 38-44 and 46-49 depend, either directly or indirectly, on allowable claim 37. Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103 rejection of claims 37-44 and 46-49.

CONCLUSION

For at least the reasons stated above, each of claims 1-6, 8, 11-18, 20, 22-30, 32-44, and 46-49 is believed to be in condition for allowance. Applicant respectfully requests withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned—by telephone at 816.474-6550 or via email at johoward@shb.com (such communication via email is herein expressly granted)—to resolve the same prior to issuing a subsequent action.

It is believed that no fee is due in conjunction with the present communication. However, if this belief is in error, the Commissioner is hereby authorized to charge any amount required to Deposit Account No. 19-2112, referencing attorney docket number MFCP.103653.

Respectfully submitted,

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